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Merit board lacks power to review security matters

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The U.S. Merit Systems Protection Board has ruled that it does not have the power to review agency decisions denying or revoking civil service security clearances.

The officials wanted the board's hearing officers to stop their practice of reviewing security clearance denials when the denials caused the firing or demotion of civil servants in sensitive jobs.

Security experts argued that lawyers and hearing examiners are in no position to make second-hand judgments about counter-intelligence and security matters.

The merit board agreed. It ruled that once an agency shows that the job in question required a security clearance and the employee concerned either failed to get, or lost, his security clearance, hearing officers have only a narrow band of review authority.

That authority, said the board, extends only to whether the agency gave the employee fair notice that he was about to be fired or demoted because of the security clearance loss.

"If the board were to exercise complete review over the underlying security clearance determination, it would inevitably be faced with ... highly sensitive materials and ... matters of national security," the three-member board said in its unanimous decision.

"We find that the underlying national security considerations ... involve such a degree of sensitivity that we should not infer jurisdiction," the board ruled.

The board's action — which came in the case of an employee at the Navy's super-sensitive Trident nuclear submarine base at Bangor, Wash., — was praised by the government's lead lawyer in the case.

"This is a bold decision that will have an important and salutary effect upon America's ability to protect the national security," Joseph A. Morris, general counsel at the Office of Personnel Management, said Friday.

"It will improve our counterintelligence capabilities and significantly enhance our capability to guarantee the security of vital classified information."

The case was one of a number that the board grouped together to decide the security clearance issue. The "Security Clearance Cases" attracted little attention as they wound their way through the board's procedures until congressional hearings and a series of espionage cases — including the so-called Walker spy ring case — highlighted problems in the government's ability to protect classified material.

In handing down last week's ruling, the board reversed its own earlier cases and rejected a 1982 ruling by the U.S. Court of Appeals for the District of Columbia Circuit.